

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 18-32633 KAC

Gary Ward Atkinson,  
Debtor

Chapter 13 Case

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**DEBTOR'S RESPONSE TO CELNAR, FSB'S MOTION FOR RELIEF FROM  
THE AUTOMATIC STAY**

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TO: CELNAR, FSB AS SERVICER FOR CITIMORTGAGE, INC., SERVICER FOR U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR CMALT REMIC 2007-A7-REMIC PASS-THROUGH CERTIFICATE SERIES 2007-A7, AND OTHER ENTITIES SPECIFIED IN LOCAL RULE 9013-3(A)(2).

1. Gary Ward Atkinson ("Debtor") through his undersigned attorneys, moves this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on this motion to determine whether the Movant is entitled to relief from the automatic stay on **WEDNESDAY, DECEMBER 15, 2021, at 1:30 p.m.** in, U.S. Courthouse, 316 North Robert Street, Court Room 2C, 2<sup>nd</sup> Floor, St. Paul, MN 55101 before the Honorable Judge Katherine Constantine, United States Bankruptcy Court Judge.

3. Pending before the court is a motion for relief from the automatic stay by Celnar, FSB as servicer for CitiMortgage, Inc., servicer for U.S. Bank National Association as trustee for CMALT REMIC 2007-A7-REMIC Pass-Through Certificate Series 2007-A7 ("Movant" or "Celnar, FSB").

4. The Debtor opposes Movant's motion. The Debtor's Modified Confirmed Chapter 13 plan filed on March 12, 2019, and confirmed on April 11, 2019 contains the following provision:

**MORTGAGE MODIFICATION PROVISION - CITIMORTGAGE, INC. AND ST. PAUL FEDERAL CREDIT UNION:** The Debtor will apply with CitiMortgage, Inc. and St. Paul Federal Credit Union for a loan modification on the 1st and 2nd mortgages by March 20, 2019 and agrees to make payments according to the loan modification agreement. The pre-petition arrears will be paid through the loan modifications, if approved. CitiMortgage, Inc. and St. Paul Federal Credit Union shall consider the loan modifications. If the Debtor fails to complete the loan modification process by April 15, 2019 or fails to provide any requested documentation or information by any prescribed deadline or the loan modification application is denied, CitiMortgage, Inc. and St. Paul Federal Credit Union shall be entitled to move for relief from the automatic stay.

5. The Debtor applied for a mortgage modification on March 12, 2019, and the Movant never followed up or contacted him in any manner to either move forward with the modification or deny the modification. There was no contact at all from the Movant regarding the modification. Attached as Exhibit A is a true and correct copy of the “Mortgage Assistance Application” submitted by the Debtor.

6. The Debtor upheld the terms of the modified plan, however, Movant did not and thus per the plan provision, is not entitled to see relief from the automatic stay at this time.

WHEREFORE, the Debtor respectfully moves this Court for an order:

1. Denying Movant’s Motion for Relief from Stay;
2. Ordering Movant to review and consider the Debtor’s loan modification application; and
3. Such other and further relief as the Court deems just and equitable.

Dated: December 7, 2021

/e/ John D. Lamey III  
**LAMEY LAW FIRM, P.A.**  
980 Inwood Avenue North  
Oakdale, MN 55128  
Telephone: (651) 209-3550  
Facsimile: (651) 789-2179  
*Attorneys for the Debtor*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 18-32633 KAC

Gary Ward Atkinson,  
Debtor

Chapter 13 Case

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**MEMORANDUM OF LAW IN RESPONSE TO CELNAR, FSB'S MOTION  
FOR RELIEF FROM THE AUTOMATIC STAY**

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Gary Ward Atkinson, debtor, submits this memorandum in in Response to Celnar, FSB as servicer for CitiMortgage, Inc., servicer for U.S. Bank National Association as trustee for CMALT REMIC 2007-A7-REMIC Pass-Through Certificate Series 2007-A7's ("Movant's") motion for relief from the automatic stay.

**BACKGROUND**

The Debtor filed for Chapter 13 bankruptcy protection on August 21, 2018. The Debtor was behind on his mortgage payments on the date that he filed a bankruptcy. The Debtor added a provision to his plan which stated the following:

**MORTGAGE MODIFICATION PROVISION - CITIMORTGAGE, INC. AND ST. PAUL FEDERAL CREDIT UNION:** The Debtor will apply with CitiMortgage, Inc. and St. Paul Federal Credit Union for a loan modification on the 1st and 2nd mortgages by March 20, 2019 and agrees to make payments according to the loan modification agreement. The pre-petition arrears will be paid through the loan modifications, if approved. CitiMortgage, Inc. and St. Paul Federal Credit Union shall consider the loan modifications. If the Debtor fails to complete the loan modification process by April 15, 2019 or fails to provide any requested documentation or information by any prescribed deadline or the loan modification application is denied, CitiMortgage, Inc. and St. Paul Federal Credit Union shall be entitled to move for relief from the automatic stay.

Because the Debtor knew the mortgage arrears had accrued to such an extent that he would not be able to afford to pay them within the terms of a 60-month plan, he specifically added this provision in his plan so that he may explore a mortgage modification which would include the arrears and allow him to keep him home. See, Ex A.

**MOVANT IS NOT ENTITLED TO RELIEF FROM THE AUTOMATIC STAY BECAUSE THE CONFIRMED CHAPTER 13 PLAN REQUIRES THEM TO CONSIDER A MODIFICATION BEFORE DOING SO, THUS NO CAUSE EXISTS.**

Section 362(d)(1) provides a creditor or other party in interest relief from the automatic stay “for cause”. 11 U.S.C. § 362(d)(1). While, the Debtor is behind on his mortgage payments, the Movant has not complied with the terms of the Debtor’s modified confirmed plan and considered the loan modification submitted by the Debtor on March 12, 2019, and the Movant may not request relief from the automatic stay until it has done so.

**CONCLUSION**

For the foregoing reasons, the Debtor respectfully requests that the Court enter an order denying Celnar, FSB’s Motion for Relief from the Automatic Stay and ordering Celnar, FSB to review and consider the Debtor’s request for a mortgage modification.

Dated: December 9, 2021

/e/ John D. Lamey III  
**LAMEY LAW FIRM, P.A.**  
980 Inwood Avenue North  
Oakdale, MN 55128  
Telephone:(651) 209-3550  
Facsimile:(651) 789-2179  
*Attorneys for the Debtor*

**VERIFICATION**

I, Gary Ward Atkinson, the Debtor, declare under penalty of perjury that the facts set forth in this Response, Memorandum and any exhibits, are true and correct to the best of my knowledge, information, and belief.

Dated: December 8, 2021

  
\_\_\_\_\_  
Gary Ward Atkinson

Loan number: &lt;loan\_num&gt;

**EXHIBIT A****Mortgage Assistance Application**

If you are having mortgage payment challenges, please complete and submit this application, along with the required documentation, to [servicer name] via mail: [address], fax: [fax #], or online: [website/email address]. We will contact you within five business days to acknowledge receipt and let you know if you need to send additional information or documents.

We will use the information you provide to help us identify the assistance you may be eligible to receive. If you need help completing this application, please contact [servicer name] at [phone #].

For a list of HUD-approved housing counseling agencies that can provide foreclosure prevention information, contact one of the following federal government agencies:

- The U.S. Department of Housing and Urban Development (HUD) at (800) 569-4287 or [www.hud.gov/counseling](http://www.hud.gov/counseling)
- The Consumer Financial Protection Bureau (CFPB) at (855) 411-2372 or [www.consumerfinance.gov/mortgagehelp](http://www.consumerfinance.gov/mortgagehelp)

If you need assistance with translation or other language assistance, HUD-approved housing counseling agencies may be able to assist you. These services are provided without charge.

**Borrower Information**Borrower's name: Gary Ward AtkinsonSocial Security Number (last 4 digits): 4567E-mail address: gary.atkinson500@gmail.comPrimary phone number: 651-[REDACTED] ☒ Cell ☐ Home ☐ Work ☐ OtherAlternate phone number: \_\_\_\_\_ ☐ Cell ☐ Home ☐ Work ☐ OtherCo-borrower's name: N/A

Social Security Number (last 4 digits): \_\_\_\_\_

E-mail address: \_\_\_\_\_

Primary phone number: \_\_\_\_\_ ☐ Cell ☐ Home ☐ Work ☐ OtherAlternate phone number: \_\_\_\_\_ ☐ Cell ☐ Home ☐ Work ☐ Other

Preferred contact method (choose all that apply): ☒ Cell phone ☐ Home phone ☐ Work phone ☒ Email ☐ Text—checking this box indicates your consent for text messaging

Is either borrower on active duty with the military (including the National Guard and Reserves), the dependent of a borrower on active duty, or the surviving spouse of a member of the military who was on active duty at the time of death? ☐ Yes ☒ No

**Property Information**Property Address: 7800 Somerset Rd, Woodbury, MN 55125Mailing address (if different from property address): PO Box 251211, Woodbury, MN 55125

- The property is currently: ☒ A primary residence ☐ A second home ☐ An investment property
- The property is (select all that apply): ☒ Owner occupied ☐ Renter occupied ☐ Vacant
- I want to: ☒ Keep the property ☐ Sell the property ☐ Transfer ownership of the property to my servicer ☐ Undecided

Is the property listed for sale? ☐ Yes ☒ No – If yes, provide the listing agent's name and phone number—or indicate "for sale by owner" if applicable: \_\_\_\_\_

Is the property subject to condominium or homeowners' association (HOA) fees? ☒ Yes ☐ No – If yes, indicate monthly dues: \$ 14.58 (\$175.00 per year)

## Hardship Information

The hardship causing mortgage payment challenges began on approximately (date) 2008 and is believed to be:

- ☐ Short-term (up to 6 months)  
☐ Long-term or permanent (greater than 6 months)  
☒ Resolved as of (date) August 2018

TYPE OF HARDSHIP (CHECK ALL THAT APPLY)	REQUIRED HARDSHIP DOCUMENTATION
<input type="checkbox"/> Unemployment	▪ Not required
<input checked="" type="checkbox"/> Reduction in income: a hardship that has caused a decrease in your income due to circumstances outside your control (e.g., elimination of overtime, reduction in regular working hours, a reduction in base pay)	▪ Not required
<input type="checkbox"/> Increase in housing-related expenses: a hardship that has caused an increase in your housing expenses due to circumstances outside your control (e.g., uninsured losses, increased property taxes, HOA special assessment)	▪ Not required
<input type="checkbox"/> Disaster (natural or man-made) impacting the property or borrower's place of employment	▪ Not required
<input type="checkbox"/> Long-term or permanent disability, or serious illness of a borrower/co-borrower or dependent family member	▪ Written statement from the borrower, or other documentation verifying disability or illness <b>Note:</b> Detailed medical information is not required, and information from a medical provider is not required
<input type="checkbox"/> Divorce or legal separation	▪ Final divorce decree or final separation agreement <b>OR</b> ▪ Recorded quitclaim deed
<input type="checkbox"/> Separation of borrowers unrelated by marriage, civil union, or similar domestic partnership under applicable law	▪ Recorded quitclaim deed <b>OR</b> ▪ Legally binding agreement evidencing that the non-occupying borrower or co-borrower has relinquished all rights to the property
<input type="checkbox"/> Death of borrower or death of either the primary or secondary wage earner	▪ Death certificate <b>OR</b> ▪ Obituary or newspaper article reporting the death
<input type="checkbox"/> Distant employment transfer/relocation	▪ <b>For active duty service members:</b> Permanent Change of Station (PCS) orders or letter showing transfer. ▪ <b>For employment transfers/new employment:</b> Copy of signed offer letter or notice from employer showing transfer to a new location or written explanation if employer documentation not applicable, <b>AND</b> ▪ Documentation that reflects the amount of any relocation assistance provided (not required for those with PCS orders)
<input type="checkbox"/> Other – hardship that is not covered above: _____ _____ _____ _____	▪ Written explanation describing the details of the hardship and any relevant documentation

## Borrower Income

Please enter all borrower income amounts in middle column.

MONTHLY TOTAL BORROWER INCOME TYPE & AMOUNT		REQUIRED INCOME DOCUMENTATION
Gross (pre-tax) wages, salaries and overtime pay, commissions, tips, and bonuses	\$1412.66	<ul style="list-style-type: none"> <li>Most recent pay stub and documentation of year-to-date earnings if not on pay stub <b>OR</b></li> <li>Two most recent bank statements showing income deposit amounts</li> </ul>
Self-employment income	\$ 550.00	<ul style="list-style-type: none"> <li>Two most recent bank statements showing self-employed income deposit amounts <b>OR</b></li> <li>Most recent signed and dated quarterly or year-to-date profit/loss statement <b>OR</b></li> <li>Most recent complete and signed business tax return <b>OR</b></li> <li>Most recent complete and signed individual federal income tax return</li> </ul>
Unemployment benefit income	\$	<ul style="list-style-type: none"> <li>No documentation required</li> </ul>
Taxable Social Security, pension, disability, death benefits, adoption assistance, housing allowance, and other public assistance	\$	<ul style="list-style-type: none"> <li>Two most recent bank statements showing deposit amounts <b>OR</b></li> <li>Award letters or other documentation showing the amount and frequency of the benefits</li> </ul>
Non-taxable Social Security or disability income	\$ 1141.00	<ul style="list-style-type: none"> <li>Two most recent bank statements showing deposit amounts <b>OR</b></li> <li>Award letters or other documentation showing the amount and frequency of the benefits</li> </ul>
Rental income (rents received, less expenses other than mortgage expense)	\$750.00	<ul style="list-style-type: none"> <li>Two most recent bank statements demonstrating receipt of rent <b>OR</b></li> <li>Two most recent deposited rent checks</li> </ul>
Investment or insurance income	\$	<ul style="list-style-type: none"> <li>Two most recent investment statements <b>OR</b></li> <li>Two most recent bank statements supporting receipt of the income</li> </ul>
Other sources of income not listed above (Note: Only include alimony, child support, or separate maintenance income if you choose to have it considered for repaying this loan)	\$	<ul style="list-style-type: none"> <li>Two most recent bank statements showing receipt of income <b>OR</b></li> <li>Other documentation showing the amount and frequency of the income</li> </ul>

## Current Borrower Assets

Exclude retirement funds such as a 401(k) or Individual Retirement Account (IRA), and college savings accounts such as a 529 plan.

Checking account(s) and cash on hand	\$ 3200.00
Savings, money market funds, and Certificates of Deposit (CDs)	\$ 0.00
Stocks and bonds (non-retirement accounts)	\$ 0.00
Other:	\$ 0.00

## Borrower Certification and Agreement

1. I certify and acknowledge that all of the information in this Mortgage Assistance Application is truthful, and the hardship I identified contributed to my need for mortgage relief. Knowingly submitting false information may violate Federal and other applicable law.
2. I agree to provide my servicer with all required documents, including any additional supporting documentation as requested, and will respond in a timely manner to all servicer or authorized third party\* communications.
3. I acknowledge and agree that my servicer is not obligated to offer me assistance based solely on the representations in this document or other documentation submitted in connection with my request.
4. I consent to the servicer or authorized third party\* obtaining a current credit report for the borrower and co-borrower.
5. I consent to the disclosure by my servicer, authorized third party,\* or any investor/guarantor of my mortgage loan(s), of any personal information collected during the mortgage assistance process and of any information about any relief I receive, to any third party that deals with my first lien or subordinate lien (if applicable) mortgage loan(s), including Fannie Mae, Freddie Mac, or any investor, insurer, guarantor, or servicer of my mortgage loan(s) or any companies that provide support services to them, for purposes permitted by applicable law. Personal information may include, but is not limited to: (a) my name, address, telephone number, (b) my Social Security number, (c) my credit score, (d) my income, and (e) my payment history and information about my account balances and activity.
6. I agree that the terms of this borrower certification and agreement will apply to any modification trial period plan, repayment plan, or forbearance plan that I may be offered based on this application. If I receive an offer for a modification trial period plan or repayment plan, I agree that my first timely payment under the plan will serve as acceptance of the plan.
7. I consent to being contacted concerning this application for mortgage assistance at any telephone number, including mobile telephone number, or email address I have provided to the lender, servicer, or authorized third party.\*

\* An authorized third party may include, but is not limited to, a housing counseling agency, Housing Finance Agency (HFA) or other similar entity that is assisting me in obtaining a foreclosure prevention alternative.

Borrower signature:  Date: 3-12-19  
Gary W. Atkinson

Co-Borrower signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Please submit your completed application, together with the required documentation, to [servicer name] via mail: [address], fax: [fax #], or online: [website/email address]. We will contact you within five business days to acknowledge receipt and let you know if you need to send additional information or documents.**

**We will use the information you provided to help us identify the assistance you may be eligible to receive.**



## Request for Transcript of Tax Return

OMB No. 1545-1872

- ▶ Do not sign this form unless all applicable lines have been completed.
- ▶ Request may be rejected if the form is incomplete or illegible.
- ▶ For more information about Form 4506-T, visit [www.irs.gov/form4506t](http://www.irs.gov/form4506t).

**Tip.** Use Form 4506-T to order a transcript or other return information free of charge. See the product list below. You can quickly request transcripts by using our automated self-help service tools. Please visit us at [IRS.gov](http://IRS.gov) and click on "Get a Tax Transcript..." under "Tools" or call 1-800-908-9946. If you need a copy of your return, use **Form 4506, Request for Copy of Tax Return**. There is a fee to get a copy of your return.

<b>1a</b> Name shown on tax return. If a joint return, enter the name shown first. <b>GARY WARD ATKINSON</b>	<b>1b</b> First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions) <div style="background-color: black; width: 100px; height: 1.2em; margin: 0 auto;"></div>
<b>2a</b> If a joint return, enter spouse's name shown on tax return.	<b>2b</b> Second social security number or individual taxpayer identification number if joint tax return
<b>3</b> Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions) <b>GARY WARD ATKINSON, PO BOX 251211, WOODBURY, MN 55125</b>	
<b>4</b> Previous address shown on the last return filed if different from line 3 (see instructions) <b>7800 SOMERSET ROAD, WOODBURY, MN 55125</b>	
<b>5a</b> If the transcript or tax information is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.	
<b>5b</b> Customer file number (if applicable) (see instructions)	

**Caution:** If the tax transcript is being mailed to a third party, ensure that you have filled in lines 6 through 9 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your tax transcript to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your transcript information, you can specify this limitation in your written agreement with the third party.

**6 Transcript requested.** Enter the tax form number here (1040, 1065, 1120, etc.) and check the appropriate box below. Enter only one tax form number per request. ▶

**a Return Transcript**, which includes most of the line items of a tax return as filed with the IRS. A tax return transcript does not reflect changes made to the account after the return is processed. Transcripts are only available for the following returns: Form 1040 series, Form 1065, Form 1120, Form 1120-A, Form 1120-H, Form 1120-L, and Form 1120S. Return transcripts are available for the current year and returns processed during the prior 3 processing years. Most requests will be processed within 10 business days ☐

**b Account Transcript**, which contains information on the financial status of the account, such as payments made on the account, penalty assessments, and adjustments made by you or the IRS after the return was filed. Return information is limited to items such as tax liability and estimated tax payments. Account transcripts are available for most returns. Most requests will be processed within 10 business days ☐

**c Record of Account**, which provides the most detailed information as it is a combination of the Return Transcript and the Account Transcript. Available for current year and 3 prior tax years. Most requests will be processed within 10 business days ☐

**7 Verification of Nonfiling**, which is proof from the IRS that you **did not** file a return for the year. Current year requests are only available after June 15th. There are no availability restrictions on prior year requests. Most requests will be processed within 10 business days ☐

**8 Form W-2, Form 1099 series, Form 1098 series, or Form 5498 series transcript.** The IRS can provide a transcript that includes data from these information returns. State or local information is not included with the Form W-2 information. The IRS may be able to provide this transcript information for up to 10 years. Information for the current year is generally not available until the year after it is filed with the IRS. For example, W-2 information for 2011, filed in 2012, will likely not be available from the IRS until 2013. If you need W-2 information for retirement purposes, you should contact the Social Security Administration at 1-800-772-1213. Most requests will be processed within 10 business days ☐

**Caution:** If you need a copy of Form W-2 or Form 1099, you should first contact the payer. To get a copy of the Form W-2 or Form 1099 filed with your return, you must use Form 4506 and request a copy of your return, which includes all attachments.

**9 Year or period requested.** Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506-T. For requests relating to quarterly tax returns, such as Form 941, you must enter each quarter or tax period separately.

/	/	/	/
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**Caution:** Do not sign this form unless all applicable lines have been completed.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax information requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506-T on behalf of the taxpayer. **Note:** This form must be received by IRS within 120 days of the signature date.

☐ **Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506-T.** See instructions.

Phone number of taxpayer on line 1a or 2a

**Signature** (see instructions) *G. W. Atkinson*  
**Gary W. Atkinson**

3-12-19

Date

**Sign Here**

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature

Date

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

Case No. 18-32633 KAC

Gary Ward Atkinson,  
Debtor

Chapter 13 Case

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**ORDER DENYING CELNAR FSB'S MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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This matter came before the undersigned on the Movant Celnar, FSB as servicer for CitiMortgage, Inc., servicer for U.S. Bank National Association as trustee for CMALT REMIC 2007-A7-REMIC Pass-Through Certificate Series 2007-A7's's motion seeking relief from the automatic stay.

Based on the Motion, all the files, records, proceedings herein, the Court being fully advised in the premises, and the Court's findings of fact and conclusions of law, if any, having been stated on the record at the close of evidence,

**IT IS ORDERED:**

1. Movant's Motion for Relief from Stay is DENIED;
2. Movant must review and consider the loan modification request submitted by the Debtor.

Dated:

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Katherine A. Constantine  
United States Chief Bankruptcy Judge